

Custom computer programs prepared to the special order of the customer are not subject to tax under the Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax where certain elements are present. 86 Ill. Adm. Code 130.1935(c) (This is a GIL)

October 4, 2000

Dear Xxxxx:

This is in response to your letter dated June 12, 2000 and your follow-up letter dated September 11, 2000, which contained additional information that we considered in drafting this response. We regret the delay in responding to your request. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter of June 12, 2000, you have stated and made inquiry as follows:

I am seeking information regarding COMPANY's requirement to pay use tax to your state on a software system that was created specifically for our use.

The software was created by BUSINESS, an affiliated entity under the BUSINESS2 group umbrella.

Please fax, email or mail me information specific to your state regarding our requirement to pay, where to report this on our return, and the percentage we are to pay.

In your letter of September 11, 2000, you have stated and made inquiry as follows:

I am seeking information regarding COMPANY's requirement to pay use tax to your state on a software system that was created specifically for our use. COMPANY does not own this software, but pays a monthly lease payment to the creators.

I have enclosed a copy of my original letter dated June 12, 2000. It is imperative that I receive this information by October 1, 2000 so that I may amend my returns as necessary.

Please fax, email or mail me information specific to your state regarding our requirement to pay, where to report this on our return, and the percentage we are to pay if required.

Generally, the sale of canned software intended for general or repeated use is taxable. Please see the enclosed copy of the regulation "Computer Software", 86 Ill. Adm. Code 130.1935. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See Section 130.1935(a).

Your letter of September 11th stated that you pay a monthly lease payment to Sun Health Systems for use of the software. A license of software is not taxable if the license meets all of the criteria set forth in subsection (a)(1)(A-E) of the enclosed copy of Section 130.1935. We cannot make a binding ruling to the taxability of your licensing arrangement with the limited information provided. You may refer to the criteria set out in A through E of Section 130.1935(a)(1) to determine if they apply to your license arrangement.

Both letters indicated that the software provided by Sun Health Systems was created specifically for your use. Custom computer programs prepared to the special order of the customer are not subject to tax under the Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax. Custom computer programs do not include canned or prewritten computer programs held for general or repeated sale or lease, however, modification of an existing prewritten program to meet a customer's specific need would be considered a custom computer program. See Section 130.1935(c). Custom software means software resulting from real and substantial changes to the operational coding of canned or prewritten software in order to meet specific individualized requirements of the purchaser for his limited or particular use. To be considered custom software exempt from tax, however, certain elements specified in subsection (c) of Section 130.1935 must also be present. See Section 130.1935(c)(1)(A-B). Please refer to the requirements set forth in Section 130.1935(c) to address whether the software you are using may be considered custom software.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel